

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

WAYNE N. NELLUMS,	:	No. ATL-92-87
	:	
Former Executive Vice President,	:	Dated: October 29, 1992
Chief Financial Officer and	:	
Treasurer of The Enstar Group,	:	
Inc., and A Person Participating in	:	
the Affairs of and an Institution-	:	
Affiliated Party of American Savings:	:	
of Florida, F.S.B., Miami, Florida	:	

**STIPULATION AND CONSENT TO ENTRY OF AN
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE
RELIEF AND ORDER OF ASSESSMENT OF
CIVIL MONEY PENALTIES**

The Office of Thrift Supervision ("OTS") and Wayne N. Nellums ("Nellums") stipulate and agree as follows:

1. Consideration. The OTS, based upon information reported to it, is of the opinion that the grounds exist to initiate an administrative proceeding against Nellums pursuant to the Federal Deposit Insurance Act, §§ 8(b) and (i), 12 U.S.C. §§ 1818(b) and (i) (West 1989). Nellums desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without either admitting or denying the factual or legal conclusions reached by OTS or that such grounds exist, hereby stipulates and consents to the issuance of the accompanying Cease and Desist Order for Affirmative Relief and Order Assessing Civil Money Penalties attached hereto as Exhibit A (the "Order") in consideration for OTS hereby forever remising, releasing and discharging Nellums of and from all debts, obligations, liabilities, reckonings, bonds, specialities, controversies, suits, actions, causes of action, claims or demands with respect to any matter discovered, or that could have reasonably been discovered, by the OTS as a result of its investigative proceeding commenced pursuant to Resolution ATL 90-17, dated November 30, 1990.

2. Jurisdiction.

- (a) American is a "savings association" and an "insured depository institution" as defined by 12 U.S.C. §§ 1462 and 1813 (West 1989).
- (b) Nellums is an institution-affiliated party as defined by 12 U.S.C. §§ 1813(u) (West 1989).
- (c) The Director of the OTS is the "appropriate Federal

Banking agency" to maintain administrative proceedings against Nellums pursuant to 12 U.S.C. §§ 1818(b) and (i) (West 1989).

3. Consent. Nellums without admitting or denying any violation of law or regulation, consents to the issuance by the OTS of the Order. He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under 12 U.S.C. §§ 1818(b) and (i) (West 1989). Upon its issuance, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i) (West 1989).

5. Waivers. Nellums waives an administrative hearing provided by 12 U.S.C. §§ 1818(b) and (i) (West 1989), and further waives his right to seek judicial review of the Order, including any such right provided by 12 U.S.C. § 1818(h) (West 1989) or otherwise to challenge the validity of the Order.

6. This Stipulation and the Order are not intended to, nor shall they have the effect of, limiting the right or authority of any other governmental agency to initiate or pursue any other action, civil or otherwise, against Nellums.

WHEREFORE, in consideration of the foregoing, the OTS and Nellums execute this Stipulation and Consent.

OFFICE OF THRIFT SUPERVISION

WAYNE N. NELLUMS

By:

/s/

/s/

John E. Ryan
Regional Director
Southeast Regional Office

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Inc., and A Person Participating in	:	
the Affairs of and an Institution-	:	
Affiliated Party of American Savings:	:	
of Florida, F.S.B., Miami, Florida	:	

**ORDER TO CEASE AND DESIST FOR AFFIRMATIVE
RELIEF AND ORDER OF ASSESSMENT OF
CIVIL MONEY PENALTIES**

WHEREAS, the Office of Thrift Supervision ("OTS") has conducted an investigation pursuant to Resolution ATL 90-17, dated November 30, 1990, into affairs and ownership of American Savings of Florida, FSB, Miami, Florida ("American") and its holding company, the Enstar Group, Inc. ("Enstar") that uncovered evidence of the following:

Wayne N. Nellums ("Nellums") from about July 1988 until July of 1989 was the senior vice president, chief financial administrative officer and treasurer of the predecessor of Enstar. In July of 1989, he was promoted to executive vice president, chief financial officer and treasurer of Enstar. During the period relevant hereto, American was a fifty-percent owned subsidiary of Enstar. Nellums' responsibilities included overseeing the tax department at Enstar.

In 1988, officials at Enstar and American devised a scheme to maximize cash flow from American to Enstar through the vehicle of a Tax Sharing Agreement which required American to pay up to Enstar for the years 1988 and 1989 more than \$17,000,000 as "tax payments" when, in fact, American incurred no actual tax liability during this period.

Nellums drafted the Tax Sharing Agreement and made the changes to it, which were ordered by his superiors, which enabled Enstar to receive excessive payments from American even though Nellums knew such an agreement would be illegal between a commercial bank and its holding company. The first draft of the Tax Sharing Agreement prepared by Nellums did not contain the language ultimately used because Nellums concluded after researching the matter that banks could not make tax payments to their holding companies unless the

holding companies incurred actual tax liability. He also supervised the employees who collected the "tax payments" from American.

Nellums was also involved in a separate series of transactions beginning in December 1989, when, pursuant to provisions of the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA"), American transferred its junk bond securities to an affiliate of Enstar in exchange for a promissory note in the principal amount of approximately \$209 million. The note, which was approved by OTS as required by law, was secured by collateral maintained in a collateral account and subject to a collateral pledge agreement between the parties. Under the terms of the agreement, the note had to be secured by collateral with a value of at least 120% of the note balance, which was a condition of OTS approval, and American and OTS had to approve any new or substituted collateral. Nellums had read the note and collateral pledge agreement and was familiar with their substantive terms.

In the weeks prior to June 8, 1990, certain senior officers and directors of American and Enstar, including Harris Friedman and Richard Grassgreen, but not including Nellums, devised a plan ("The Collateral Substitution Plan") to pledge as collateral stock of a retail subsidiary of Enstar, in order to create "excess collateral" in the collateral account. In effect this was a plan to substitute stock of uncertain value for cash that would be withdrawn from the collateral pool securing the note from Enstar to American. The Collateral Substitution Plan was devised to provide up to \$45 million of capital needed by the retail subsidiary of Enstar. Nellums was advised of the Collateral Substitution Plan by Grassgreen. Enstar's Board of Directors, of which Nellums was not a member, approved the Collateral Substitution Plan.

On or before June 22, 1990, Nellums determined in his capacity as Chief Financial Officer of Enstar, that Enstar needed \$29,000,000 in cash to meet its consolidated business plan objectives. Richard Grassgreen thereupon ordered Nellums to draft a letter for Grassgreen's signature addressed to American and requesting that American release to Enstar \$29 million in excess collateral. The letter was transmitted to American on June 22, 1990.

American released the funds on receipt of the letter. Nellums was advised that approval from OTS for the Collateral Substitution Plan had been sought but was aware that OTS had not yet approved either the pledge of stock as collateral or the withdrawal of cash from the collateral account. In August 1990, OTS advised American that the stock of the retail subsidiary was not acceptable as collateral. In August and September 1990, at a time when the ratio of collateral to the principal balance of the note had fallen

below the required 120%, Nellums, knowing that OTS had still not approved the transaction, twice more, sought cash in the amount of \$9,281,000 for Enstar from the collateral account for a total of more than \$38 million. American has lost more than \$23 million as a result of the Collateral Substitution Plan.

WHEREAS, Nellums neither admits nor denies the allegations arising from the OTS investigation.

WHEREAS, Nellums has executed a stipulation between Nellums and the OTS, acting through its Regional Director for the Southeast Regional Office, attached hereto and incorporated herein by this reference (the "Stipulation"); and

NOW THEREFORE, the OTS, pursuant to Section 8 of the Federal Deposit Insurance Act ("FDIA"), as amended, HEREBY ORDERS as follows:

1. Nellums shall not seek nor accept any office, directorship or employment in, or participate in any manner in the conduct of the affairs of, any insured depository institution without obtaining the prior written consent of the appropriate Federal Banking Agency and/or other primary regulator, after disclosure of this Order.

2. Nellums shall pay a civil money penalty of \$2500 to the OTS within ten days of the effective date of this Order by tendering to the OTS a check made payable to the Treasurer of the United States.

3. Nellums shall, pursuant to his prior agreement, cooperate fully with OTS by, among other things, providing full and truthful testimony in connection with any administrative hearing or other proceeding arising out of OTS's investigation into the affairs of American authorized by Resolution ATL 90-17, dated November 30, 1990.

4. Nellums acknowledges and agrees that his consent to the entry of this Order is for the purposes of resolving only those matters discovered, or could have reasonably been discovered, by the OTS as a result of its investigative proceeding commenced pursuant to Resolution ATL 90-17, dated November 30, 1990.

5. All technical words or phrases used in this Order, for which meanings are not otherwise specified or otherwise provided by the provisions of this Order, shall insofar as applicable, have the meanings set forth in one or more of the following laws and regulations: the Home Owners' Loan Act, as amended by FIRREA; the FDIA, as amended by FIRREA; and the regulations of the OTS, as codified in the Code of Federal Regulations, Title 12, Chapter V (or currently published in

the Federal Register). Any technical words or phrases not subject to definition in the foregoing laws and regulations shall have meanings that accord with the best custom and usage in the savings association industry.

6. This Order shall be and is effective and enforceable upon service on counsel for Nellums.

IT IS SO ORDERED on this 29th day of October, 1992.

OFFICE OF THRIFT SUPERVISION

By:

/s/

John E. Ryan
Regional Director
Southeast Regional Office